Supreme Court, U.S.
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No. 94-43

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1994

TERA HARPER, JEFFREY TOM, and ALLAN ANDUHA, in their capacities as Chairperson and Members of the Adjustment Committee, Halawa Correctional Facility, Hawaii Department of Public Safety

Petitioners,

vs.

SABIL M. MUJAHID, a.k.a. Terry Smith,

Respondent.

On Petition For a Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether Hawaii's prison regulations created in Respondent a "liberty interest" in being free from disciplinary segregation and whether these rights were implicated in the prison disciplinary proceedings over which petitioners presided?

2. Whether the Ninth Circuit was correct in remanding this case for further consideration of Respondent's equitable claims arising out of the failure of the prison adjustment committee to give him an adequate statement of reasons for the imposition of disciplinary segregation against him?

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondent, Sabil M. Mujahid, submits this brief in opposition to the Petition for Writ of Certiorari filed by Tera Harper, Jeffrey Tom, and Allan Anduha, in their capacities as Chairperson and Members of the Adjustment Committee, Halawa Correctional Facility Hawaii Department of Public Safety. This Opposition is related to Sandin v. Conner, No. 93-1911 (Pet. for Cert. filed May 26, 1994).

STATEMENT

Respondent Sabil M. Mujahid, aka Terry Smith, was until early August 1994, an inmate housed at the Halawa High Security Facility in Aeia, Hawaii. At the end of 1990, Respondent decided to officially change his name from Smith to Mujahid. In an attempt to assist Respondent, his brother Frank mailed a letter to the Lieutenant Governor which contained forms and stamps which were then forwarded to Respondent. Respondent determined that he did not need the stamps and attempted to return them to his brother. On December 28, 1990, Respondent attempted to send a letter containing the unused postage stamps to his brother in Kansas City. The outside of the letter stated in prominent language, "5 stamps enclosed." [Pet. 7.]

Prison officials at the Halawa Correctional Facility intercepted the letter and charged Respondent with violating two prison rules. The first of these rules prohibits "[p]ossession of anything not authorized for retention or receipt by the inmate or ward and not issued to the inmate...through regular institutional channels." State of Hawaii, Dep't of Social Servs. and Housing, Title 17, Admin. R. of the Corrections Div., Rule 17-201-8(a)(10). The second prohibits "[g]iving money or anything of value to or accepting money or anything of value from an inmate or ward, a member of the inmate's or wards family, or friend." State of Hawaii, Dep't of Social Servs. and Housing, Title 17, Admin. R. of the Corrections Div., Rule 17-201-8(a)(31).

On March 1, 1991, an adjustment hearing was held under Hawaii prison regulations. Petitioners Tera Harper, Jeffrey Tom and Alan Anduha were members of the Adjustment Committee. At the hearing Respondent appeared on his own behalf and presented a defense to the charges. Petitioners nevertheless found Respondent guilty of both charges and ordered him to spend fourteen days in disciplinary segregation. The adjustment committee later issued a report. Even though the administrative rules require the Committee to "set forth evidence relied upon and the reasons for the actions taken," the Committee simply stated that it had based its decision "on written reports and testimonies presented at the hearing." [Pet.App. A4]

Respondent brought a pro se action under 42 U.S.C. § 1983 claiming that the adjustment committee violated his due process rights and seeking compensatory and punitive damages and equitable relief. The District Court granted summary judgment on all of Respondent's claims.

The Ninth Circuit, in an unpublished opinion, decided that the Hawaii regulations contained the kind of mandatory language that was sufficient to create a liberty interest in freedom from administrative segregation except where substantial evidence of guilt of specific offenses was found by the adjustment committee. The Ninth Circuit also emphasized that Hawaii regulations mandate a statement of reasons for a decision to impose administrative segregation. [Pet. A6] The Ninth Circuit found that the Committee's deficient statement of reasons violated Respondent's due process rights.

The Ninth Circuit affirmed the District Court's summary judgment on Respondent's damage claims on qualified immunity grounds. [Pet. A8-9] The Ninth Circuit remanded the case to the District Court for consideration of Respondent's remaining equitable claims.

Since the filing of the Petition in July 1994 Respondent has been released on parole. The significance of Respondent's release on parole for his remaining equitable claims has not been considered by the Ninth Circuit or the District Court making this case an especially inappropriate venue to determine any of the issues akwardly raised in the Petition.

REASONS FOR DENYING THE WRIT

I.

THIS CASE DOES NOT WARRANT REVIEW BECAUSE THE NINTH CIRCUIT CORRECTLY APPLIED THIS COURT'S PRECEDENTS IN FINDING THAT HAWAII'S PRISON REGULATIONS CREATE A LIBERTY INTEREST IN REMAINING FREE FROM DISCIPLINARY SEGREGATION.

This Court has consistently held that a "state law may create enforceable liberty interests in the prison setting."[1] In Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 461 (1989). Whether state law creates such a liberty interest enforceable under the Due Process Clause of the Fourteenth Amendment and 42 U.S.C.

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[1] This Court has held in a variety of settings that prison regulations granted inmates a protected liberty interest in parole, Board of Pardons v. Allen, 482 U.S. 369 (1987); Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1 (1979), in good-time credits, Wolff v. McDonnell, 418 U.S. 539, 556-572 (1974).

section 1983 must be determined by examining "closely the language of the relevant statutes and regulations" Id. The Ninth Circuit's opinion followed this approach in determining that the Hawaii prison regulations at issue in this case created a liberty interest in being free from disciplinary segregation unless a certain showing of misconduct was shown by "substantial evidence."

In Hewitt v. Helms 459 U.S. 460, 472 (1983) this Court held that a prisoner who was subject to administrative segregation had a protected liberty interest created under Pennsylvania law. In Hewitt this Court found that the Pennsylvania procedures at issue in that case created a liberty interest in being free from administrative segregation because the state provision "used language of an unmistakably mandatory character, requiring that certain procedures "shall", "will" or "must" be employed...and that administrative segregation will not occur absent specified substantive predicates--viz., 'the need for control' or the threat of a serious disturbance." Id.

This case is similar in that Hawaii's prison regulations are sufficiently mandatory to create a protected liberty interest in a prisoner. The Hawaii regulations require a finding of guilt of special offenses by "substantial evidence" before disciplinary segregation may be imposed. [Pet.App A7] No disciplinary segregation may be imposed without meeting these "substantive predicates."

In particular, the adjustment must find a prisoner guilty of specific offenses before imposing disciplinary segregation. These

state regulations thus fall squarely within Hewitt v. Helms and there is no reason to revisit this issue by granting the Petition.

Petitioner's primary contention is that this Court's decision in Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 461 (1989) somehow forecloses the finding of a protected liberty interest in these circumstance. However, this Court derived its test in Kentucky Department of Corrections from its holding in Hewitt and expressly reaffirmed Hewitt. The Court stated first that a statute must contain "substantive predicates" or "particularized standards to govern official decision making. Next, the Court stated that the regulation must require in "explicitly mandatory language" that if the substantive predicates are met a particular outcome must follow. Id. at 461-462.

In Kentucky Department of Corrections, this Court found that the regulation restricting prisoner visitor privileges at issue in that case "lack[ed] the requisite relevant mandatory language since visitors "may", but need not, be excluded whether they fall within one of the categories of excludable visitors." Id. at 454. Thus, this Court found that the state regulations were not the kind that created expectations of enforcement sufficient to create a liberty interest in a certain form of visitation.

Petitioner contends that Hawaiian prison regulations at issue in this case are more like the regulations in Kentucky Department of Corrections than the regulations in Hewitt. In particular, Petitioner argues that these regulations are not sufficiently mandatory because they stop short of requiring that a particular

result be reached upon a finding that the "substantive predicates" are met because prisoners may not be assigned to segregation even after a finding of guilt.

However, the Ninth Circuit was correct in finding that Hawaii law creates a liberty interest in being free from the imposition of administrative segregation unless the prisoner admits his guilt of specific misconduct defined substantially in state regulations [Pet.App A35-41] or has been found guilty based on "substantive evidence." There is nothing discretionary about these requirements. Administrative segregation may not be imposed unless these substantive predicates are met. Thus, this case falls squarely within Hewitt v. Helms and is not the kind of discretionary visitation regulation at issue in Kentucky Department of Corrections.

II.

THE NINTH CIRCUIT'S DECISION IS NOT IN CONFLICT WITH THE DECISIONS OF OTHER COURTS OF APPEALS.

Petitioner's argue that the Ninth Circuit's holding conflicts with the holdings of other Circuits in similar cases. In particular, Petitioner claims that Burgin v. Nix, 899 F.2d 733 (8th Cir. 1990) and Woods v. Thieret, 903 F.2d 1080 (7th Cir. 1990), are in conflict with the Ninth Circuit's holding in this case.

In Burgin the issue was whether a prisoner had a liberty interest in eating a "non-sacked" meal as opposed to a nutritionally similar and adequate "sacked" meal. Burgin, 899 F.2d

at 734. The Burgin Court never reached the analysis required in Hewitt and Kentucky Department of Corrections but found that there was essentially no difference between "sacked" and "non-sacked" meals that triggered any kind of due process analysis. Id. at 734-735. Indeed, the Burgin court emphasized that there were no Iowa statutes or regulations guaranteeing that prisoners would receive a specific type of meal. Id. at 735. Under Iowa regulations prisoners who were placed on incorrigible inmate status may be served "sacked" meals "in some cases" and thus the regulations, unlike the regulations at issue in this case, did not have the explicitly mandatory language required under this Court's cases to establish a liberty interest in freedom from "sacked" lunches based on particular mandatory substantive prerequisites. Id.

Nor is the Seventh Circuit's holding in Woods v. Thieret 903 F.2d 1080 (7th Cir. 1990) in conflict with the decision below. In Woods, a prison inmate challenged three separate "lockdowns" in his cell. The regulations at issue in Woods provided for a disciplinary hearing and possible temporary confinement status based on three criteria. The Seventh Circuit found that these regulations were not sufficiently mandatory under the principles in Kentucky Board of Corrections and Hewitt to create a "liberty interest" of the kind asserted by the prisoner in that case. Id. at 1083. The regulations at issue were completely different from the regulations at issue in this case. In Woods, the Seventh Circuit held that "while the rules mandate who shall make the determinations and what shall be considered (the three substantive

predicates), they do not mandate any particular outcome." Id. Thus, the Illinois regulations considered in Woods did not create any mandatory substantive standards to be found before temporary confinement could be ordered by prison officials. The key difference in this case is that the Hawaii regulations at issue create clear, mandatory substantive predicates before prison officials may impose administrative segregation.

There is no conflict between the Ninth Circuit's holding in this case and the holdings in Burgin or Woods. In each case the court applied this Court's analysis in Hewitt and Kentucky Department of Corrections and came to different conclusions because of the different statutory schemes involved.

III.

THE NINTH CIRCUIT DECISION CORRECTLY FOUND THAT DUE PROCESS REQUIRES A MORE COMPLETE STATEMENT OF DECISION THAN WAS AFFORDED TO RESPONDENT IN THIS CASE AND IS NOT IN CONFLICT WITH THE DECISIONS IN OTHER CASES

The Ninth Circuit decided that the reasons given to Respondent for the imposition of disciplinary segregation were wholly inadequate based on this Court's decision in Wolff v. McDonnell, 418 U.S. 539 (1974). In Wolff this Court insisted that due process requires, at a minimum, "a written statement of . . . the evidence relied upon and the reasons for the disciplinary action taken." Wolff, 418 U.S. at 563. See also Redding v. Fairman, 717 F.2d 1105, 1115 N.4 (7th Cir. 1983), cert. denied, 465 U.S. 1025 (1984); King v. Wells, 760 F.2d 89, 93 (6th Cir. 1983).

Petitioners claim that the Ninth Circuit's decision creates "detailed factfinding requirements" [Pet. 17] on prison disciplinary committees and is in conflict with the Eighth Circuit's decision in Brown v. Frey, 807 F.2d 1407 (8th Cir. 1986). [Pet. 19]

First, the Ninth Circuit has not created any new requirement of detailed fact finding. In this case Petitioners gave no indication of the reasons for their decision at all. A statement of decision that says that Petitioners relied on the testimony and evidence presented amounts to no statement of reasons. The Ninth Circuit broke no new ground in deciding that Petitioner's statement violated due process.

Second, the decision in Brown v. Frey, supra, is not in conflict with the Ninth Circuit's holding in this case. In Brown the court required the prison committee to commit itself to certain evidence and specified reasons for the disciplinary decision at the time the decision is made. 807 F.2d at 1414. The Brown Court would have found Petitioners' statement wholly inadequate under these principles. Thus, there is no conflict between the Circuits for this Court to resolve. This is certainly so in the context of the wholly deficient statement issued by Petitioners in this case.

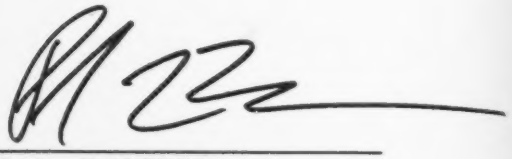
CONCLUSION

For all of these reasons the Petition should be denied. In particular, Respondent's release on parole after the filing of the Petition makes this case an inappropriate case for review by this

Court. The significance of Respondent's release should be determined by the District Court on remand in the first instance.

DATED: September 6, 1994

Respectfully submitted,



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